

PHILIP SHAIMAN

IBLA 75-635

Decided June 14, 1976

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting phosphate prospecting permit applications W-50120 through W-50126.

Affirmed in part; set aside and remanded in part.

1. Administrative Procedure: Generally--Mineral Leasing Act:
Generally--Phosphate Leases and Permits: Permits

When deciding whether issuance of a phosphate prospecting permit is appropriate, the Bureau of Land Management is entitled to rely on the reasoned opinion of Geological Survey as its technical expert. A mineral determination made by Geological Survey will not be disturbed in the absence of a clear and definite showing of error. However, when Survey later changes its own determination, the case will be remanded for further-consideration.

APPEARANCES: Philip Shaiman, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Philip Shaiman applied for seven phosphate prospecting permits, numbered W-50120 through W-50126, for various lands located in Fremont County, Wyoming. By decision dated May 14, 1975, the Wyoming State Office, Bureau of Land Management (BLM), rejected appellant's permit applications. Appellant then filed this appeal.

The BLM State Office rejected the applications because the United States Geological Survey (Survey) had reported the applied-for lands are "underlain with valuable deposits of phosphate and are, therefore, subject to the leasing, rather than the prospecting provisions of the Mineral Leasing Act." In his statement of reasons, appellant argues that available information is insufficient

to support a determination that the lands are underlain with valuable deposits of phosphate. In addition, he requests that he be allowed to review the data and reasoning used by Survey in reaching its conclusion.

In order to properly consider appellant's contentions, it was necessary to examine the basis for the BLM decision. However, the basis for that decision was a memorandum from Survey stating that the lands included

in appellant's prospecting permit applications are underlain with valuable deposits of phosphate. Such a bare statement provides insufficient information to uphold the BLM decision when an appellant challenges the validity of the geological and economic data used in reaching the conclusion. Therefore, we requested Survey to provide the Board and appellant the basis for its memorandum. Appellant was then given the opportunity to comment on Survey's response to our request. He has not done so.

Survey states in its response to the Board's request that the known valuable deposits of phosphate, which are now subject to six phosphate leases, extend under the land contained in four of appellant's prospecting permit applications (W-50123 through W-50126). Survey repeats its conclusion that these lands are therefore not subject to prospecting permits. However, Survey reverses its original recommendation for the other three applications and states that it will favorably recommend prospecting permits be issued for the lands contained in applications W-50120, W-50121 and W-50122.

[1] Phosphate prospecting permits are issued "[w]here prospecting or exploratory work is necessary to determine the existence or workability of phosphate deposits." 30 U.S.C. § 211(b) (1970). When deciding whether issuance of a prospecting permit is appropriate, BLM is entitled to rely on the reasoned opinion of Survey as its technical expert. James C. Goodwin, 9 IBLA 139, 143-44, 80 I.D. 7, 9-10 (1973); Clear Creek Inn Corp., 7 IBLA 200, 213-14, 79 I.D. 5718 577-78 (1972). A General determination made by Survey will not be disturbed in the absence of a clear and definite showing of error. James C. Goodwin, *supra*; Clear Creek Inn Corp., *supra*; see William T. Alexander, 21 IBLA 56 (1975).

While appellant challenged in general terms the basis for Survey's determination, he has provided no specific information, particularly in response to the statement of Survey concerning its underlying reasoning. Appellant has not made a clear and definite showing of error. We therefore affirm the BLM decision rejecting phosphate prospecting permit applications W-50123 through W-50126. In view of the reconsideration by Survey of its original conclusion, we set aside the rejection by BLM of phosphate prospecting permit applications W-50120 through W-50122 and remand those case files for further consideration.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and set Aside and remanded in part.

Administrative Judge

Joan B. Thompson

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

